

**REQUEST FOR PROPOSAL – CONSTRUCTION SUBCONTRACT
INSTRUCTIONS TO OFFERORS**

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1. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) “Offer” includes “bid” or “proposal.” Offer means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant subcontract. Responses to requests for proposals (negotiation) are offers called “proposals”.
- (b) “Offeror” includes “bidder.”
- (c) “Invitation for Bid” means “Request for Proposal” or “Solicitation.”
- (d) “Deficiency” is a material failure of a proposal to meet the solicitation requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.
- (e) “Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.
- (f) “Weakness” means a flaw in the proposal that increases the risk of unsuccessful contract performance. A “significant weakness” in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.
- (g) “Proposal modification” is a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.
- (h) “Exchanges” After receipt of proposals, Fermilab may need to hold exchanges with offerors for various reasons. These exchanges fall into two categories: “clarifications” and “discussions.”
- (i) “Clarifications” are limited exchanges that may occur when award without discussions is contemplated. These limited exchanges involve the clarification of certain aspects of a proposal (e.g., the relevance of an offeror’s past performance information and adverse

past performance information to which the offeror has not previously had an opportunity to respond) or resolution of minor or clerical errors.

- (j) "Discussions" are communications the primary objective of which is to maximize Fermilab's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation. If "discussions" are necessary due to perceived weaknesses or other issues that must be addressed before award, they will be conducted with only those offerors determined to be within the competitive range. These "discussions" may be conducted either orally or in writing (or a combination).
- (k) "Final Proposal Revisions (FPR)" or "Best and Final Offer (BAFO)"– After conclusion of "discussions", all offerors still in the competitive range will be provided an opportunity to submit a FPR.

2. NOTICE OF BUY AMERICAN ACT REQUIREMENT – CONSTRUCTION MATERIALS

Attention is directed to the clause in the FL-6 entitled "Notice of Buy American Act – Construction Materials," and to the clause in the FL-3 entitled "Buy American Act – Construction Materials." Under those clauses, construction material utilized under any subcontract resulting from this solicitation must be "domestic construction material," as that term is defined in the aforementioned clause in the FL-3. Any offeror seeking an exception to this requirement must submit with its offer the supporting information described in the subsections entitled "Request for Determination of Inapplicability of the Buy American Act" and "Data" of that clause in the FL-3.

3. EXPLANATION TO PROSPECTIVE OFFERORS

Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective Offerors before the submission of their offers. Oral explanations or instructions given before the award of the subcontract will not be binding. Any information given to a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective Offerors.

4. GUARANTEE

- (a) Failure to furnish a guarantee in the proper form and amount, by the time set for due date of the offers, may be cause for rejection of the offer.
- (b) The Offeror shall furnish a guarantee in the form of a firm commitment, such as a bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. Fermilab will return guarantees, other than bonds, (1) to unsuccessful offerors as soon as practicable after the opening of offers, and (2) to the successful offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required.
- (c) If the successful offeror, upon acceptance of its offer by Fermilab within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, Fermilab may terminate the subcontract for default.
- (d) Unless otherwise specified in the solicitation, the offeror will allow 60 days for acceptance.
- (e) In the event the subcontract is terminated for default, the offeror is liable for any cost of acquiring the work that exceeds the amount of its offer and the guarantee is available to offset the difference.

5. WAGE DETERMINATION

The wage rates set forth are the minimum rates which may be paid to the classification of laborers and mechanics designated therein pursuant to the Davis-Bacon Act (Act of March 3, 1931, as amended; 40 U.S.C. 276 *et seq.*). The Laboratory does not represent that said minimum rates do now, nor that they will at any time in the future, prevail in the locality of the work for such laborers or mechanics; nor that such laborers or mechanics are or will be obtainable at said rates for work under this subcontract; nor that said rates represent the most recent wage determination by the Secretary of Labor with respect to such classifications of laborers or mechanics in the locality of work.

6. SUBMISSION OF OFFERS

- (a) The Offeror shall submit the following as its offer:
 - (i) a completed Exhibit II, Request for Proposal form.
 - (ii) a completed Exhibit III, Representations, Certifications, and Acknowledgements.
 - (iii) its Guarantee of not less than 20 percent of the proposal price in accordance with Clause 4 of these Instructions to Offerors.
- (b) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation and (2) showing the time specified for receipt, the solicitation number, and the name and address of the Offeror.
- (c) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice, if that notice is received by the time specified for receipt of offers.
- (d) Unless not authorized by the solicitation, facsimile offers, modifications or withdrawals will be considered. Fermilab Procurement Department facsimile numbers are (630) 840-2907 or (630) 840-2457.
- (e) Unless called for, alternate offers will not be accepted.
- (f) Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to Fermilab and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.
- (g) This solicitation does not commit Fermilab or the United States Government to pay for any costs incurred in the preparation or submission of any offer or to procure or contract for any supplies or services.

7. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSAL

- (a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it-
 - (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

- (2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by Fermilab that the late receipt was due solely to mishandling by Fermilab after receipt at Fermilab;
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. [The term "working days" excludes weekends and U.S. Federal holidays.]; or
 - (4) Is the only proposal received.
- (b) Any modification of a proposal or quotation, except a modification resulting from Fermilab's request for "best and final offer", is subject to the same conditions as in subsections (a)(1), (2), and (3) above.
 - (c) A modification resulting from Fermilab's request for "best and final offer" received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by Fermilab after receipt at Fermilab.
 - (d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by registered or certified mail in the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, quotation, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, Offerors or quoters should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
 - (e) The only acceptable evidence to establish the time of receipt at Fermilab is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.
 - (f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in section (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, Offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
 - (g) Notwithstanding section (a) above, a late modification of an otherwise successful proposal that makes its terms more favorable to Fermilab will be considered at any time it is received and may be accepted.
 - (h) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposal, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an Offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

8. AWARD

- (a) Fermilab will award a subcontract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to Fermilab, cost or price and other factors, specified elsewhere in this solicitation, considered.

- (b) Fermilab may (1) reject any or all offers, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.
- (c) Fermilab may award a subcontract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Offeror's best terms from a cost or price and technical standpoint.
- (d) Fermilab may accept any item or combination of items of an offer, unless the Offeror qualifies the offer by specific limitations.

9. FERMILAB SUBCONTRACT

The successful bidder will be required to execute a Fermilab Construction Subcontract attached to this solicitation with its applicable Exhibits:

10. PAYMENT AND PERFORMANCE BONDS

- (a) The successful bidder will be required to furnish a Performance Bond on Fermilab forms (sample attached to this solicitation) in 100 percent of the subcontract price and Payment Bond on Fermilab forms (sample attached to this solicitation) in an amount consistent with subsection 28.2 of the FL-3 (Terms and Conditions - Fermilab Construction Subcontract).
- (b) Performance and Payment Bonds must be furnished within ten (10) calendar days after effective date of subcontract. Fermilab will furnish to the Subcontractor at no cost the necessary forms for Performance and Payment Bonds. A Notice to Proceed will not be issued until such bonds have been received by Fermilab. All costs incidental to obtaining bonds must be included in the bid price.
- (c) If the successful bidder fails to furnish such Performance and Payment Bonds within ten (10) calendar days after effective date of the subcontract, its subcontract may be terminated for default. Your attention is directed to the "Bonds" clause of the FL-3 (Terms and Conditions - Fermilab Construction Subcontract) attached to the Fermilab Subcontract.

11. INSURANCE VERIFICATION

Special attention is directed to the "Insurance" clause of the FL-3 (Terms and Conditions - Fermilab Construction Subcontract) regarding insurance requirements and certifications with special note that the United States Government and Fermi Research Alliance, LLC are to be named as additional insured under said policies.

12. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

Attention is directed to that clause of the FL-3 (Terms and Conditions - Fermilab Construction Subcontract) attached to Fermilab Construction Subcontract, which is entitled as above. Particular attention is directed to the statement therein that this clause shall be physically included in all sub-subcontracts for construction trades at any tier, including the goals for women and minority participation.

13. PRIORITIES AND ALLOCATIONS - DOMESTIC ENERGY SUPPLIES

A program or project under this subcontract may be determined to be eligible for priorities and allocations support as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if it is determined that its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Energy and Commerce.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985, as it may from time to time be revised. Copies may be obtained by written requests to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

14. ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATION

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Offerors shall acknowledge receipt of any amendment to this solicitation by -
 - (1) signing and returning the amendment,
 - (2) identifying the amendment number and date in the space provided for this purpose in the FL-6,
 - (3) letter or telegram, or
 - (4) facsimile, if facsimile offers are authorized in the solicitation.

Fermilab must receive the acknowledgement by the time and at the place specified for receipt of offers.

15. RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by Fermilab except for evaluation purposes, shall -

- (a) Mark the title page with the following legend:

"This proposal or quotation includes data that shall not be disclosed outside Fermilab and shall not be duplicated, used, or disclosed - in whole or in part - for any purpose other than to evaluate this proposal or quotation. If, however, a subcontract is awarded to this Offeror or quoter as a result of - or in connection with - the submission of this data, Fermilab shall have the right to duplicate, use, or disclosure the data to the extent provided in the resulting subcontract. This restriction does not limit Fermilab's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets *(insert numbers or other identification of sheets)*"; and
- (b) Mark each sheet of data it wishes to restrict with the following legend: "Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."

16. DAVIS –BACON ACT—SECONDARY SITE OF THE WORK

- (a)(1) The Offeror shall notify Fermilab if the Offeror intends to perform work on any secondary site of the work, as defined in paragraph 13.1 of provision 13 (“DAVIS-BACON ACT”) of the FL-3, Fermilab Construction Subcontract Terms and Conditions, included with this solicitation.
- (2) If the Offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the Offeror shall request a determination from Fermilab.
- (b)(1) If the wage determination provided by Fermilab for work at the primary site of the work is not applicable to the secondary site of the work, the Offeror shall request a wage determination from Fermilab.
- (2) The due date for receipt of offers will not be extended as a result of an Offeror’s request for a wage determination for a secondary site of the work.